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INFO RUEHBJ/AMEMBASSY BEIJING IMMEDIATE 1071  
RUEHBY/AMEMBASSY CANBERRA IMMEDIATE 2490  
RUEHBUL/AMEMBASSY KABUL IMMEDIATE 0551  
RUEHUL/AMEMBASSY SEOUL IMMEDIATE 7139  
RUEHFK/AMCONSUL FUKUOKA IMMEDIATE 5448  
RUEHNH/AMCONSUL NAHA IMMEDIATE 7842  
RUEHOK/AMCONSUL OSAKA KOBE IMMEDIATE 9113  
RUEHKS/AMCONSUL SAPPORO IMMEDIATE 6054  
RHEHAAA/WHITE HOUSE WASHDC IMMEDIATE  
RUEATRS/TREASURY DEPT WASHDC IMMEDIATE  
RHEFDIA/DIA WASHINGTON DC IMMEDIATE  
RUCPDO/DEPT OF COMMERCE WASHINGTON DC IMMEDIATE  
RUEAIIA/CIA WASHDC IMMEDIATE  
RUENAAA/SECNAV WASHINGTON DC IMMEDIATE  
RHHMUNA/HQ USPACOM HONOLULU HI IMMEDIATE  
RUEKJCS/SECDEF WASHDC IMMEDIATE  
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C O N F I D E N T I A L SECTION 01 OF 03 TOKYO 000107

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SUBJECT: FUKUDA FORCES PASSAGE OF NEW TERROR LAW; OEF  
REFUELING OPERATIONS COULD RESUME IN FEBRUARY

REF: TOKYO 5613

Classified By: Political Minister Counselor Mike Meserve, reasons 1.4(b), (d).

11. (C) Summary. Prime Minister Yasuo Fukuda carried through on his promise to the international community on January 11, forcing passage of new anti-terror legislation through the Diet over the objections of the opposition-controlled Upper House. Passage of the new law will enable Japan to resume refueling efforts in the Indian Ocean in support of anti-terror maritime interdiction operations under Operation Enduring Freedom as early as February, subject to suitable progress on an exchange of notes. MSDF supply activities were suspended in November 2007, when the previous law expired. The new measure, originally passed in the Lower House on November 13, was voted down in the Upper House in the morning, then passed into law by a constitutionally authorized two-thirds majority re-vote in the Lower House later that same day (the first time the Lower House has overridden an Upper House vote in 57 years). The refueling bill has been the focus of intense debate since August. Now that it has passed, the focus will turn to whether this "victory" for Fukuda in the short-term ultimately works to the advantage of the ruling parties or the opposition. End summary.

New Law Authorizes Resumption of OEF Refueling Activities  
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12. (SBU) The Fukuda administration passed a new Anti-Terror Special Measures Law on January 11, 59 days after the law was first passed in the Lower House and forwarded to the Upper House. The new law authorizes Japan's Maritime Self-Defense Forces (MSDF) to resume refueling operations in the Indian Ocean in support of anti-terror maritime interdiction efforts (MIO) under Operation Enduring Freedom (OEF). Defense Minister Shigeru Ishiba is expected to propose an implementation plan to the Cabinet the third week of January, with the goal of dispatching MSDF units back to the region by

the end of the month. MSDF units could resume supply activities in the Indian Ocean as early as mid-February, according to Embassy contacts, pending suitable progress on an exchange of notes intended to ensure that Japanese oil is not diverted for uses outside of the OEF/MIO anti-terror mandate.

¶3. (SBU) Under the terms of the new law, which specifically references UN Security Council Resolution 1776, the MSDF can operate in non-combat zones, including the Persian Gulf, to provide fuel and water to military vessels from countries engaged in OEF/MIO, as long as those supply activities do not constitute the threat or exercise of force. The law expires after one year, but can be extended for up to one additional year. MSDF units may be dispatched without prior Diet approval, but the Prime Minister must report back to the Diet whenever MSDF units are dispatched or the implementation plan is changed.

#### Unlikely Battleground, Bruising Fight

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¶4. (C) Passage of the new law represents a victory of sorts for Prime Minister Yasuo Fukuda, who inherited the bill from his predecessor, Shinzo Abe. After failing to capitalize on ruling coalition control of the Diet to extend the existing law in July, Abe resubmitted the bill to the current Diet session in August. The original law, enacted in 2001, expired on November 1, 2007, leading to the withdrawal of all MSDF units from the Indian Ocean on that date. In the interim, Abe and his ruling Liberal Democratic Party (LDP)-Komeito coalition colleagues were caught flat-footed

TOKYO 00000107 002 OF 003

when main opposition Democratic Party of Japan (DPJ) leader Ichiro Ozawa seized on the OEF refueling mission in August to take a political stand and try to force early Lower House elections.

¶5. (C) Coming off an upset win in the July Upper House election that was all about livelihood issues, Ozawa was expected to continue to focus on pensions or regional economic disparities as a way to differentiate the DPJ from the ruling parties in the new Diet session. His decision to instead stake his party's political future on a foreign policy issue barely mentioned in his party's election manifesto and of little consequence to most Japanese voters led Abe in turn to say he would "stake his career" on passage of a new OEF bill. Abe's failure to gain any ground on the new legislation played a role, albeit minor, in his sudden decision to resign in early September, but did not dissuade Fukuda from taking on the issue when he assumed office later that month.

¶6. (C) The new anti-terror bill was passed in the Lower House on November 13. Since then, the opposition has relied on a series of defense-related scandals and other administration missteps to stall deliberations in the Upper House, while public support for the measure, never much higher than 50 percent, steadily dwindled. Administration attempts to play up opposition obstructionism were of little use, as the public continued to focus its concern on pensions, healthcare, and taxes. Allegations that some MSDF-provided fuel may have been diverted for other uses only deepened the debate. The opposition has thus far failed in its attempts to use the OEF mission as a wedge issue to force Fukuda to dissolve the Lower House and call a snap election. With the current Upper House lineup locked into place until July 2010 and no requirement for a Lower House election before September 2009, Ozawa has no choice but to either capture a majority in the Lower House or orchestrate some sort of political realignment to realize his goal of unseating the LDP-Komeito coalition before then, Embassy contacts say.

#### Unconventional Passage a Foregone Conclusion

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¶7. (C) To pass the bill into law, Fukuda was forced to rely on a seldom used provision of Japan's Constitution that allows the Lower House to pass a bill over the objections of the Upper House by a two-thirds majority vote, a procedure last used in 1951. The bill was voted down in the Upper House in the morning and passed into law on a Lower House re-vote in the afternoon. The ruling parties hold 337 of 480 seats in the Lower House. The vote was 340 in favor and 133 against, with seven no votes. Ozawa himself left the Diet before the vote, reportedly to stump for the DPJ candidate in the January 27 Osaka gubernatorial campaign, according to a media contact.

¶8. (C) Had the DPJ not voted the bill down, it would have automatically reverted to the Lower House for a re-vote on January 12, 60 days after it was introduced to the Upper House. Media contacts say it is too early to tell how the public will react to use of the override mechanism. Heavy-handed tactics -- even entirely constitutional ones -- tend to play poorly among Japan's consensus-oriented electorate, our contacts note, but the public also tends to forget such "abuses" rather quickly.

Comment  
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¶9. (C) Now that the bill has passed, attention will likely turn to the impact of the vote on the Fukuda administration and the ruling and opposition parties. Fukuda's popularity

TOKYO 00000107 003 OF 003

ratings have plummeted in recent weeks, attributed in part to continued problems with Japan's pension records. Supportive statements from Ambassador Schieffer and the Department received press play just after passage of the measure and will have a positive impact, as will those from other coalition countries. Passage of a law to compensate victims of tainted blood products the same day is another positive deliverable for Fukuda in the short term. Much will depend on whether the parties can now find a way to work more cooperatively to address domestic concerns.

¶10. (C) On the opposition side, Ozawa and the DPJ have thus far failed to capitalize on their opposition to the OEF measure. Waffling over whether to vote the government's bill down or to submit a counterproposal for nearly three months did little to project an image that this was a principled stand. Several failed attempts to coordinate with the Socialist and Communist Parties -- without which the DPJ does not have a majority in the Upper House -- have also done little to boost the opposition's standing. For now, at least, the DPJ has dropped the idea of passing a censure motion in the Upper House to protest the override. By ultimately choosing to vote the measure down, rather than hold it for 60 days -- a decision that was forced on Ozawa by the other opposition parties -- the DPJ has effectively lost the ability to criticize Fukuda for ignoring Upper House calls for further deliberation.

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